

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
NATHANIEL S. GREEN,)	Case No. 99-41291
STACY L. GREEN,)	
a/k/a STACY L. WIESMORE)	MEMORANDUM OF DECISION
)	
Debtors.)	
)	
)	
)	
)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Paula Brown Sinclair, Twin Falls, Idaho, for Debtors.

Alfred E. Barrus, Burley, Idaho, for Kloepper, Inc.

BACKGROUND

The Amended Chapter 13 Plan ("Plan") of debtors Nathaniel and Stacy Green ("Debtors") came on for confirmation hearing on November 8, 1999. The Plan, at § 5(d), p.7, expressly classified a "claim of mechanics and materialman's lien" of creditor Kloepper, Inc. ("Creditor") as a "judicial lien" subject to avoidance by the Debtors under § 522(f)(1).¹ The Court took under advisement, subject to briefing

¹ The Court notes that the Debtors, subsequent to the confirmation hearing,
(continued...)

which was completed on December 15, the question of whether the Creditor's lien was subject to avoidance under this provision of the Code.

The Court, being fully advised and having considered the contentions of the parties, finds that the attempted avoidance in the Plan is improper. The Creditor's objection to confirmation shall therefore be sustained. This decision constitutes the Court's findings and conclusions on the matter. Fed.R.Bankr.P. 7052, 9014.

DISCUSSION

There is no dispute that the Creditor's lien is asserted under the provisions of Title 45, Chapter 5 of the Idaho Code concerning "Liens of Mechanics and Materialmen." The Debtors seek to avoid this lien on the theory that it is a judicial lien, and as such, is avoidable to the extent that it impairs the Debtors' homestead exemption. § 522(f)(1). That section provides, in pertinent part:

(1) [T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is –

(A) a judicial lien

"Judicial lien" is defined by the Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceedings." § 101(36). In contrast, a "statutory lien" is a "lien arising solely by force of a statute on specified circumstances or conditions, or lien or distress for rent, whether or not statutory, but

¹(...continued)

commenced an adversary proceeding, Adv. No. 99-6293, attacking the Creditor's mechanic's lien under § 545 as an avoidable statutory lien.

does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.” § 101(53).

The Debtors’ assertion in this case is inconsistent with this Court’s decision in *Koski v. Seattle First National Bank, (In re Koski)*, 93 I.B.C.R. 8, 12-13, 149 B.R. 170, 176-77 (Bankr. D. Idaho 1992), which clearly held that an Idaho mechanic’s lien is a statutory lien and not a judicial lien avoidable under § 522(f). The Debtors’ attempt to overcome this precedent is unpersuasive.²

Koski is fully consistent with case law from other jurisdictions:

There are a number of decisions that hold mechanic’s liens arising under the pertinent state law to be statutory liens in bankruptcy; none, however, have held a mechanic’s lien to be a judicial lien.

James N. Duca, *The Interaction Between Mechanics’ Lien Law and the Bankruptcy Code*, 53 Bus. Law 1283, 1306 (1998) (footnote and case citations omitted.)³

² The Debtors argue that the Idaho statute creates no lien at all unless and until a judicial action is timely brought to foreclose it, and a judgment in that action is entered. This “lien of final judgment”, they assert, must be a judicial lien. Among the problems with this theory (including, perhaps most importantly, the lack of any judicial imprimatur) is that it confuses the creation of the lien under statute with its subsequent enforcement.

³ The Debtors cite *In re Croce*, 190 B.R. 106 (Bankr. D. Minn. 1995), as supporting characterization of a mechanic’s lien as a judicial lien. What they fail to mention is that the Minnesota Constitution requires a judgment to be rendered and docketed before a debt for materials and labor may become a lien upon the homestead. *Id.* at 109 (citations omitted). In other words, the Minnesota statute did not create the lien, as does Idaho’s statute. *Croce*’s holding that a Minnesota

(continued...)

This judicial recognition that mechanic's and materialmen's liens are statutory liens is also in accord with the legislative history: "A statutory lien is only one that arises automatically, and is not based on any agreement to give a lien or on judicial action. Mechanics', materialmen's and warehousemen's liens are examples." *Koski*, 149 B.R. at 177, n. 14, quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 314 (1977), reprinted in 1978 U.S.Code Cong. & Admin. News 5963, 6271 (emphasis supplied.)

Debtors also argue, without any supporting authority, that a mechanic's lien might be both a judicial and statutory lien at the same time. The Court finds this contention without merit. In addition to the plain language of the Code, the legislative history could not be more clear. "These 'three categories [statutory lien, judicial lien, and security interest] are mutually exclusive and are exhaustive except for certain common law liens.'" *In re Ramsey*, 89 B.R. 680, 681 (Bankr. S.D. Ohio 1988) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 312 (1977), reprinted in 1978 U.S.Code Cong. & Admin. News 5787, 6269).

CONCLUSION

For the reasons set forth above, the Court finds that the Creditor's lien is a statutory lien, not subject to avoidance under § 522(f)(1). Therefore, the Creditor's

³(...continued)
"constitutional lien" is a "judicial lien," 190 B.R. at 110, is thus easily distinguished.

objection to confirmation of the Plan is well taken and will be sustained. Confirmation of the Plan will be denied.⁴

An Order consistent herewith will be entered.

Dated this 23rd day of December, 1999.

⁴ Though other issues were discussed at confirmation hearing, the primary question presented was whether the Creditor's lien is a "judicial lien" avoidable under § 522(f). The Court's decision resolves that question, and requires the Plan's treatment of the Creditor to change. For that reason and since there is also now a related adversary proceeding, the Court will refrain from comment on these other issues and leave them for further development.